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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez*

Summary

In the present report, the Special Rapporteur focuses on children deprived of their liberty from the perspective of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

In the report, the Special Rapporteur explores the international legal framework and standards protecting children deprived of their liberty from being subjected to torture or other ill-treatment and from experiencing developmentally harmful and torturous conditions of confinement. He also examines specific statutes and standards applying to prevent torture and ill-treatment of children deprived of liberty, and shortcomings in the practical implementation of legal standards.

* Late submission.

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Contents

		Paragraphs	*Page*
I.	Introduction	1 – 2	3
II.	Activities of the Special Rapporteur	3 – 15	3
	A. Upcoming country visits and pending requests	3 – 5	3
	B. Highlights of key presentations and consultations	6 – 15	3
III.	Torture and ill-treatment of children deprived of their liberty	16 – 68	4
	A. Legal framework and international standards	19 – 33	4
	B. Torture and other ill-treatment of children deprived of their liberty in law and in practice	34 – 62	7
	C. Training, complaint mechanisms and monitoring	63 – 68	14
IV.	Conclusions and recommendations	69 – 86	15
	A. Conclusions	69 – 83	15
	B. Recommendations	84 – 86	19

I. Introduction

1. The present report is submitted to the Human Rights Council in accordance with Council resolution 25/13.

2. In an addendum to the present report (A/HRC/28/68/Add.1), the Special Rapporteur makes his observations on cases sent to Governments between 1 December 2013 and 30 November 2014, as reflected in the communications reports of special procedures mandate holders (A/HRC/26/21, A/HRC/27/72 and A/HRC/28/85). The Special Rapporteur made follow-up visits to Tajikistan and Tunisia (A/HRC/28/68/Add.2). During the period under review, the Special Rapporteur also visited Mexico (see A/HRC/28/68/Add.3) and the Gambia (see A/HRC/28/68/Add.4).

II. Activities of the Special Rapporteur

A. Upcoming country visits and pending requests

3. The Special Rapporteur plans to visit Georgia from 12 to 20 March 2015. He is engaged with the Governments of Thailand and Brazil to find mutually agreeable dates for visits in 2015.

4. The Special Rapporteur, with the support of the Anti-torture Initiative, plans to conduct follow-up visits to Morocco and Western Sahara, and to Ghana.

5. The Special Rapporteur continues to request an invitation from the Government of the United States of America to visit the detention centre at Guantanamo Bay, Cuba, on conditions that he may accept. His request to visit State and federal prisons in the United States is still pending. Similarly, the Government of Bahrain has not suggested new dates for a visit after the second postponement.

B. Highlights of key presentations and consultations

6. From 21 April to 2 May 2014, the Special Rapporteur conducted a country visit to Mexico at the invitation of the Government.

7. From 4 to 6 June 2014, the Special Rapporteur conducted a follow-up visit to Tunisia at the invitation of the Government to assess the level of implementation of his recommendations and to identify remaining challenges regarding torture and other ill-treatment.

8. On 3 September 2014, the Special Rapporteur published a volume entitled *Próximos pasos hacia una política penitenciaria de derechos humanos en Uruguay: Ensayos de seguimiento a las recomendaciones de 2009 y 2013 de la Relatoría de Naciones Unidas sobre la tortura* ("Next Steps Towards a Human Rights Penitentiary System in Uruguay: Reflections on the Implementation of the 2009 and 2013 Recommendations of the United Nations Special Rapporteur on Torture")

9. On 8 September 2014, the Special Rapporteur participated in a webinar on police torture and human rights in Pakistan, co-organized by Justice Project Pakistan.

10. On 9 September 2014, the Special Rapporteur held a lecture on the theme "the Argentine experience and the emergence of a universal right to truth" at the Duke Human Rights Center at the Franklin Humanities Institute.

11. On 20 October 2014, the Special Rapporteur presented his interim report on the role of forensic and medical science in the prevention of torture to the General Assembly (A/69/387). He also participated in side events and met with representatives of permanent missions and civil society organizations.

12. From 3 to 7 November 2014, the Special Rapporteur conducted a country visit to the Gambia at the invitation of the Government.

13. On 10 and 11 November 2014, the Special Rapporteur held an expert consultation in Washington, D.C. on the theme "Children deprived of their liberty" with support of the Anti-Torture Initiative and the Ford Foundation.

14. On 14 November 2014, the Special Rapporteur held a presentation at the Rothko Chapel in Houston, Texas, as part of an event entitled "Mainstreaming torture: ethical approaches in the post-9/11 United States".

15. On 19 November 2014, the Special Rapporteur held a presentation at a reception organized by the World Organization against Torture for the launch of the new edition of its publication *Seeking Remedies for Torture Victims: A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies*.

III. Torture and ill-treatment of children deprived of their liberty

16. Children deprived of their liberty are at a heightened risk of violence, abuse and acts of torture or cruel, inhuman or degrading treatment or punishment. Even very short periods of detention can undermine a child's psychological and physical well-being and compromise cognitive development. Children deprived of liberty are at a heightened risk of suffering depression and anxiety, and frequently exhibit symptoms consistent with post-traumatic stress disorder. Reports on the effects of depriving children of liberty have found higher rates of suicide and self-harm, mental disorder and developmental problems.

17. The unique vulnerability of children deprived of their liberty requires higher standards and broader safeguards for the prevention of torture and ill-treatment. Specific practices and issues, such as segregation, the organization and administration of detention facilities, disciplinary sanctions, opportunities for rehabilitation, the training of specially qualified personnel, family support and visits, the availability of alternative measures, and adequate monitoring and oversight, require specific attention and modified standards.

18. For the above reasons, the Special Rapporteur has chosen to dedicate his thematic report to the unique forms of protection due to children deprived of their liberty and the particular obligations of States with regard to preventing and eliminating torture and ill-treatment of children in the context of deprivation of liberty.

A. Legal framework and international standards

19. A number of international human rights treaties are relevant to torture and other ill-treatment in the context of children deprived of their liberty. These include the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishmentand the International Covenant on Civil and Political Rights, as well as regional treaties, such as African, Inter-American and European regional instruments. The Convention on the Rights of the Child is *lex specialis* on the human rights protections afforded to children.

20. Other legal instruments applicable to children include the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) and the Standard Minimum Rules for the Treatment of Prisoners.

1. Deprivation of liberty of children

21. For the purpose of the present report, "deprivation of liberty" denotes any form of detention or imprisonment or the placement of a child in a public or private custodial setting where that child is not permitted to leave at will by order of any judicial, administrative or other authority (A/68/295, para. 27). Deprivation of liberty involves more severe restriction of motion within a narrower space than mere interference with liberty of movement: it includes police custody, remand detention, imprisonment after conviction, house arrest, administrative detention, involuntary hospitalization and institutional custody. It also includes children deprived of their liberty by private individuals or entities that are empowered or authorized by a State to exercise powers of arrest or detention.

22. In accordance with the Convention on the Rights of the Child, and regardless of the age of majority, the terms "children" and "child" refer to all persons under the age of 18 years.

2. Prohibition of torture and other ill-treatment of children

23. The prohibition of torture is one of the few absolute and non-derogable human rights standards, a peremptory norm of customary international law or *jus cogens*. In addition, international law acknowledges the need for special protections for children and detained persons.

24. In its general comment No. 2, the Committee against Torture interpreted States' obligations to prevent torture are indivisible, interrelated and interdependent with the obligation to prevent cruel, inhuman, or degrading treatment or punishment (ill-treatment) because conditions that give rise to ill-treatment frequently facilitate torture (CAT/C/GC/2, para. 3). The Convention on the Rights of the Child and the Havana Rules have extended this protection to children deprived of their liberty, specifying that no member of the detention facility or institutional personnel may inflict, instigate or tolerate any act of torture or any form of harsh, cruel, inhuman or degrading treatment, punishment, correction or discipline under any pretext or circumstance whatsoever.

25. Under article 37 (b) of the Convention on the Rights of the Child and explained by the Committee on the Rights of the Child in its general comment No. 10 (CRC/C/GC/10), the deprivation of liberty of a child should be a last resort measure to be used only for the shortest possible period of time. Similarly, the Havana Rules require that deprivation of liberty be limited to exceptional cases. Both the Beijing Rules and the Riyadh Guidelines emphasize this principle. In addition, the best interests of the child must be a primary consideration in every decision on initiating or continuing the deprivation of liberty of a child.[1]

26. Where the deprivation of liberty of a child can be justified as necessary, limited and consistent with the best interests of the child, the child must be treated with humanity and respect for his or her inherent dignity and in a manner that takes into account the needs of

[1] Convention on the Rights of the Child, art. 3 (1).

persons of their age and maturity.[2] The Convention on the Rights of the Child specifies that the right to be confined in an age-appropriate manner includes, in particular, the right to be separated from adults unless it is considered in the child's best interest not to do so, and the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances. Article 40 (1) of the Convention emphasizes this principle with regard to children in conflict with the law by adding the desirability of promoting the child's reintegration and assumption of a constructive role in society.

27. The Havana Rules indicate how States should approach the deprivation of liberty of children, going beyond the Standard Minimum Rules for the Treatment of Prisoners by including guidelines on classification and placement, physical environment and accommodation, education, vocational training and work, recreation, religion and medical care, notification of illness, injury and death, contact with the wider community, limitations of physical restraint and the use of force, as well as disciplinary procedures and return to the community.

28. The role of medical and forensic sciences in the prevention of torture and other ill-treatment for children deprived of their liberty is clear (see A/69/387, paras. 19-57). All children are to be properly interviewed and physically examined by a medical doctor or qualified nurse reporting to a doctor as soon as possible after their admission to an institution, preferably on the day of arrival. In the case of girls, access to gynaecologists and education on women's health care are to be provided.[3]

29. To ensure that detention will not disrupt preparation for adulthood and the full realization of a child's potential, access to education is a fundamental right of children deprived of their liberty.[4] While Rule 77 (1) of the Standard Minimum Rules for the Treatment of Prisoners states that the education of illiterates and children should be compulsory, articles 38 to 46 of the Havana Rules also recommend participation in community schools, the availability of diplomas without reference to institutionalization, and the provision of vocational training.

30. Article 40, paragraphs 3 (b) and (4), of the Convention on the Rights of the Child provides that alternatives to detention, such as care, guidance and supervision orders, counselling; probation, foster care, education and vocational training programmes should first be sought, or other alternatives that ensure that children are dealt with in a manner appropriate to their well-being and proportionate to both their circumstances and the offence committed.

31. Lastly, regardless of the form of deprivation of liberty, whether criminal, institutional or administrative, article 37 (d) of the Convention on the Rights of the Child requires that any decision to deprive a child of liberty must be subject to periodic review of its continuing necessity and appropriateness. In its general comment No. 35, the Human Rights Committee specified that the child has a right to be heard, directly or through legal or other appropriate assistance, in relation to any decision regarding their deprivation of liberty, and that the procedures employed should be child-appropriate (CCPR/C/GC/35, para. 62).

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[2] International Covenant on Civil and Political Rights, art. 10; Convention on the Rights of the Child, art. 40; Bejing Rules, para. 5.1.

[3] Bangkok Rules 6-18.

[4] European Convention on Human Rights, art. 5; European Court on Human Rights, *Buomar v. Belgium*; Inter-American Court of Human Rights, *Juvenile Reeducation Institute v. Paraguay*, judgement of 2 September 2004, para. 161.

3. Vulnerability of children and the threshold for torture and other ill-treatment

32. Children are particularly vulnerable to certain human rights violations, including torture and other forms of ill-treatment. The Convention on the Rights of the Child, in its article 37 (c), establishes the obligation to take into account the age-specific needs of children. The Human Rights Committee, the European Court of Human Rights and the Inter-American Court of Human Rights, have also recognized the need for States to provide special measures or heightened "due diligence" to protect the personal liberty and security of every child.[5]

33. Children experience pain and suffering differently to adults owing to their physical and emotional development and their specific needs. In children, ill-treatment may cause even greater or irreversible damage than for adults.[6] Moreover, healthy development can be derailed by excessive or prolonged activation of stress response systems in the body, with damaging long-term effects on learning, behaviour and health. A number of studies have shown that, regardless of the conditions in which children are held, detention has a profound and negative impact on child health and development. Even very short periods of detention can undermine the child's psychological and physical well-being and compromise cognitive development. Children held in detention are at risk of post-traumatic stress disorder, and may exhibit such symptoms as insomnia, nightmares and bed-wetting. Feelings of hopelessness and frustration can be manifested in acts of violence against themselves or others. Reports on the effect of detention on children have found higher rates of suicide, suicide attempts and self-harm, mental disorder and developmental problems, including severe attachment disorder.[7] The threshold at which treatment or punishment may be classified as torture or ill-treatment is therefore lower in the case of children, and in particular in the case of children deprived of their liberty.

B. Torture and other ill-treatment of children deprived of their liberty in law and in practice

1. Children in conflict with the law

34. International standards require the establishment of a minimum age of criminal responsibility that reflects when a child has the adequate mental capacity and moral

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[5] Human Rights Committee, general comments No. 17, para. 1 and No. 35, para. 62; European Court of Human Rights, *Z and Others v. United Kingdom*, paras. 74-75; Inter-American Court of Human Rights, *Gonzales v. USA*, final observations, 24 March 2008, pp. 64-67;.

[6] See for example Anthony Lake and Margaret Chan, *Putting science into practice for early child development*, UNICEF, New York and WHO Geneva, 20 September 2014; and Michael D. De Bellis et al., "Developmental Traumatology Part II: Brain Development", *Biological Psychiatry*, vol. 14, No. 10 (15 May 1999), pp. 1271-1284.

[7] See The heart of the nation's existence: a review of reports on the treatment of children in Australian detention centres, ChilOut, 2002, appendix E, Michael Dudley and Bijou Blick; Sarah Mares and Jon Jureidini, "Psychiatric assessment of children and families in immigration detention – clinical, administrative and ethical issues", *Australian and New Zealand Journal of Public Health*, vol. 28, No. 6 (2004) pp. 520-526; Human Rights and Equal Opportunity Commission, "A last resort? National Enquiry into Children in Immigration Detention", April 2004; Zachary Steel et al., "The politics of exclusion and denial: the mental health costs of Australia's refugee policy", 12 May 2003, p. 10.

competence to be punished for crimes. In its general comment No. 10 (CRC/C/GC/10), the Committee on the Rights of the Child encouraged States parties to increase their lower minimum age of criminal responsibility to the age of 12 years as the absolute minimum age, and to continue to increase it to a higher age level. Nevertheless, many countries still maintain a minimum age of criminal responsibility well below 12 years.

35. States have an international obligation to put in place a dedicated legal system and law enforcement processes for children. All too often, criminal justice systems are designed for adults and incorporate none of the specific procedural safeguards required for children. In particular, adult criminal justice systems expose children to a range of sentences and disciplinary punishments aimed specifically at adults, without any rehabilitative component.

36. The imposition of the death penalty on children is forbidden under international law and has been accepted so universally as to reach the level of a *jus cogens* norm (A/67/279, para. 62).

37. Similarly, life sentences without the possibility of release for children are expressly prohibited by international law and treaties, including article 37(a) of the Convention on the Rights of the Child. The Committee on the Rights of the Child, in its general comment No. 10 (CRC/C/GC/10), and the Human Rights Committee, in its general comment No. 21, confirmed that life imprisonment without the possibility of release is never an appropriate punishment for an offence committed by a juvenile offender.[8] The vast majority of States have taken note of the international human rights requirements regarding life imprisonment of children without the possibility of release. Significantly, the United States of America is the only State in the world that still sentences children to life imprisonment without the opportunity for parole for the crime of homicide.

38. With regard to life imprisonment of children, the Human Rights Council, in its resolution 24/12, and the Committee on the Rights of the Child, in its general comment No. 10, urged States to ensure that no one is sentenced to life imprisonment for an offence committed by persons under 18 years of age.

39. Although the Convention on the Rights of the Child requires States to ensure that detention or imprisonment of children should only be used as a measure of last resort, in exceptional circumstances, for the shortest possible period of time and only if it is in the best interests of the child, in reality, detention is often used as the first response to perceived problems. During his country visits, the Special Rapporteur observed that, although alternative or non-custodial measures are provided by law, in a high percentage of cases, detention is the preferred option and not the last resort (see A/HRC/22/53/Add.3, para. 53).

40. In many instances, the worst situations for children arise at the time of arrest by the police, and during transportation or subsequent questioning in police custody (see A/HRC/16/52/Add.5, para. 43 and A/HRC/22/53/Add.1, para. 73). During the period immediately following apprehension, children are at particularly high risk of physical, verbal and psychological violence, such as verbal abuse, threats and beatings, and they are too often not provided with information on their human rights and the allegations brought against them in a manner that they can understand.[9] Following their arrest, children often do

[8] See also CCPR/C/112/D/1968/2010, paras. 7.7 and 7.11, and Inter-American Commission on Human Rights, *Juvenile Justice and Human Rights in the Americas: Rapporteurship on the Rights of the Child* (UNICEF, 13 July 2011), para. 364.

[9] See, for example, Association for the Prevention of Torture, Jean-Jacques Gautier NPM Symposium, "Addressing children's vulnerabilities in detention", outcome report, June 2014, p. 14

not have prompt and private access to legal assistance or notification of their parents or caregivers, which makes them even more vulnerable and subject to a higher risk of being subjected to torture or other ill-treatment.

41. Despite the international legal framework in place, the majority of children deprived of their liberty are held in pretrial detention, often for prolonged periods, and for minor offences, often in unsuitable premises.[10] In many countries, the excessive use of pretrial detention leads to overcrowded facilities.

42. Many States continue to hold children and adults in the same facilities, in particular those in pretrial detention and police custody, but also during transportation or in the context of immigration detention. Moreover, the continuous trying and sentencing of children as adults and the lack of specialized juvenile facilities have resulted in numerous children being placed in adult prisons. Disciplinary and other administrative rules and procedures are often applied, regardless of child status.

43. Detaining children and adults together will inevitably result in negative consequences for the children, who are five times as likely to be subjected to a substantiated incident of sexual violence, and are also much more likely to witness or experience other forms of violence, including physical harm by facility staff members.[11] They are also more likely to commit suicide or engage in other forms of self-harm when housed in adult – rather than juvenile – facilities. Research also shows that imprisoning children with adults can result in increased recidivism and negative long-term consequences for children, their families and communities.[12]

44. In many States, solitary confinement is still imposed on children as a disciplinary or "protective" measure. National legislation often contains provisions to permit children to be placed in solitary confinement. The permitted time frame and practices vary between days, weeks and even months. In accordance with views of the Committee against Torture, the Subcommittee on Prevention of Torture and the Committee on the Rights of the Child, the Special Rapporteur is of the view that the imposition of solitary confinement, of any duration, on children constitutes cruel, inhuman or degrading treatment or punishment or even torture (see A/66/268, paras. 77 and 86, and A/68/295, para. 61).[13]

45. During country visits, the Special Rapporteur regularly observes the practice of corporal punishment as a disciplinary measure for children in detention, including severe caning, flogging, beating with sticks and electric cords, beatings on the buttocks with wooden boards, and being forced to kneel for long periods with hands in the air (A/HRC/25/60/Add.1, paras. 64-65 and A/HRC/22/53/Add.2, para. 56). Some States still allow the use of corporal punishment as a criminal sentence for children. With regard to the jurisprudence of United Nations treaty bodies and the European Court, the mandate holder has found that any form of corporal punishment is contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (see A/60/316 and A/67/279).

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[10] Ibid. and A/HRC/21/25, para. 8.

[11] See Anna Volz, "Stop the Violence! The overuse of pre-trial detention, or the need to reform juvenile justice systems", Defence for Children International, Geneva, July 2010, p. 16.

[12] Information received from the American Civil Liberties Union during the expert consultation held in Washington, D.C. on 10 and 11 November 2014.

[13] See also A/HRC/22/53/Add.1, para. 73; United Nations Rules for the Protection of Juveniles Deprived of their Liberty, para. 67; Committee on the Rights of the Child, general comment No. 10 (CRC/C/GC/10), para. 89.

He also noted that States cannot invoke provisions of domestic law to justify violations of the prohibition of corporal punishment.

46. Children are subjected to a range of adult punishments in detention, including physical and manual restraints, routine humiliation and degrading searches, and the indiscriminate use of mace, pepper spray and other harmful chemicals. During country visits, the Special Rapporteur has observed the use of psychotropic drugs for children in detention in order to maintain security in juvenile detention facilities (see A/HRC/22/53/Add.3, para. 52). In some instances, such forms of punishment (especially restraints) are adopted as a first resort rather than being used only in exceptional cases.

47. A large number of children deprived of their liberty show signs of mental health problems, or mental illnesses or psychological disorders, which are often exacerbated during their detention. Children in detention are prone to self-harm, including suicide, because of depression. In many instances, children who suffer from mental health problems have no access to mental health screening within the first hours of admission to a detention centre and do not receive adequate treatment, including psychosocial counselling during detention. Moreover, children showing signs of mental health problems are often held together with children who do not show such signs.

48. Girls deprived of their liberty are at a heightened risk of sexual violence, sexual exploitation and underage pregnancies while in detention. The risk of sexual abuse is greater when male guards supervise girls in detention. Girls deprived of their liberty have different needs not only to those of adults but also of boys. Girls in detention are often not only children but also carers, either as mothers or as siblings, and have specific health, hygiene and sanitary needs. Across the globe, girls are rarely kept separately from women in pretrial and post-conviction settings (see A/HRC/16/52/Add.3, para. 54). Similarly, the Special Rapporteur notes that lesbian, gay, bisexual, transgender and intersex children are at a heightened risk.

49. Children deprived of their liberty are often not allowed to maintain regular contact with their families and friends, because either they are denied contact as a form of punishment or are placed in facilities located far away from their homes and families. A lack of vocational, educational and recreational activities for children deprived of their liberty creates situations of risk of abuse and ill-treatment. When children spend most of their time confined in their cells, they may experience a lack of motivation and even depression, which in turn can leads to incidents of abuse and violence between children or with staff members. The Special Rapporteur wishes to point out that, while lack of activities is detrimental for any prisoner, it is especially harmful for children, who have a particular need for physical activity and intellectual stimulation. This is also true for children detained with their mothers in prison. During country visits, the Special Rapporteur has observed that women's section of prisons often show inadequate space for women with children and a lack of well-equipped recreation areas for children (see A/HRC/22/53/Add.2, para. 58).

2. Children in institutions

50. The State's obligation to prevent torture applies not only to public officials, such as law enforcement agents, but also to medical doctors, health-care professionals and social workers, including those working in private hospitals, other institutions and detention centres (A/63/175, para. 51 and A/HRC/22/53, paras. 23-26).

51. The Special Rapporteur has previously recognized that ill-treatment may occur in a diverse range of settings, even where the purpose or intention of the State's action or inaction was not to degrade, humiliate or punish the child. He notes that most instances of ill-treatment of children deprived of their liberty outside of the criminal justice system, such as children in administrative immigration detention or institutional settings, involve acts of

omission rather than commission, such as emotional disengagement or unsanitary or unsafe conditions, and result from poor policies rather than from an intention to inflict suffering. Purely negligent conduct lacks the intent required under the prohibition of torture, but may constitute ill-treatment if it leads to pain and suffering of some severity (A/63/175, para. 49). This is the case when the suffering is severe and meets the minimum threshold under the prohibition against torture and other ill-treatment, when the State is, or should be, aware of the suffering, including when no appropriate treatment was offered, and when the State has failed to take all reasonable steps to protect the child's physical and mental integrity.

52. Private detention is often presented as a preferable alternative to forced criminal or health-related institutionalization of children with special needs, whether those needs be physical, mental or psychological. The Special Rapporteur notes that, because national law often does not regulate private detention centres, there is a gap in legal protections that may lead to rampant abuse.

53. Special attention should be paid to children deprived of their liberty in health-care institutions (including hospitals, public and private clinics, hospices and institutions where healthcare is delivered). Children are detained in such settings primarily to treat psychiatric, psychosocial or intellectual disabilities, or drug dependence issues. Almost all States have legislation that permits the detention of children for psychiatric health purposes.[14] Persons with disabilities are particularly affected by forced medical interventions, and continue to be exposed to unwarranted non-consensual medical practices (A/63/175, para. 40). During his country visits, the Special Rapporteur has observed that, in particular with regard to children with disabilities, "incapacity" is often presumed, which limits their ability to decide where to live and what treatment to receive,[15] and may be taken as the basis of substitution of determination and decision-making by the child, or by parents, guardians, carers or public authorities.[16] Structural inequalities, such as the power imbalance between medical doctors and patients, exacerbated by stigma and discrimination, result in children with disabilities being disproportionately vulnerable to having informed consent compromised (A/HRC/22/53, para. 29). In this context, the Committee on the Rights of Persons with Disabilities, in its general comment No. 1 (CRPD/C/GC/1), explained that involuntary psychiatric treatment is prohibited on the grounds that it violates the right to consent to medical treatment under article 12 of the Convention on the Rights of Persons with Disabilities and the absolute prohibition of torture and cruel, inhuman and degrading treatment (para. 42). The Committee on the Rights of the Child, in its general comment No. 12 (CRC/C/GC/12), stated that children should be provided with information about proposed treatments and their effects and outcomes, including in formats appropriate and accessible to children with disabilities (paras. 48 and 100).

54. The Special Rapporteur observes that children who use, or are suspected of using, drugs are commonly involuntarily confined in so-called rehabilitation centres. Children thus confined are compelled to undergo diverse interventions (A/HRC/22/53, para. 40), including painful withdrawal from drug dependence without adequate medical assistance, administration of unknown or experimental medications, State-sanctioned beatings, caning or whipping, forced labour, sexual abuse and intentional humiliation. Other reported abuses included "flogging therapy", "bread and water therapy", and electroshock resulting in seizures, all in the guise of rehabilitation. In some countries, a wide range of other

[14] Carolyn Hamilton et al., "Administrative detention of children: a global report", UNICEF and the Children's Legal Centre, February 2011, p. 140.

[15] See A/HRC/25/60/Add.1, para. 80 and CRC/C/GC/12, para. 21.

[16] See Convention on the Rights of Persons with Disabilities, art. 7.

marginalized groups, including street children and children with psychosocial disabilities, are reportedly detained in these centres.

55. Similarly, the involuntary commitment of children with mental disabilities, including those who have long-term intellectual or sensory impairments, to psychiatric and social care institutions, psychiatric wards, prayer camps, secular and religious-based therapeutic boarding schools, boot camps, private residential treatment centres or traditional healing centres has been well documented. Such children may live their whole lives in such psychiatric or social care institutions (A/HRC/22/53, paras. 57 and 68). Article 14, paragraph 1 (b) of the Convention on the Rights of Persons with Disabilities unambiguously states that "the existence of a disability shall in no case justify a deprivation of liberty". The Committee on the Rights of Persons with Disabilities has found that legislation that allows detention in a mental health institution on the basis of a standard of danger to self or others infringes this provision. Indeed, the Committee has repeatedly urged States to ensure that no one is detained against their will in any kind of mental health facility.[17] Furthermore, the Special Rapporteur has observed the continued use of solitary confinement and prolonged restraint of children with disabilities in psychiatric institutions. The environment of patient powerlessness and abusive treatment of children with disabilities in which restraint and seclusion are used can lead to other non-consensual treatment, such as forced medication and electroshock procedures (A/HRC/22/53, para. 63).

56. One of the most egregious forms of abuse in health and social care settings is unique to children. Numerous studies have documented that a child's healthy development depends on the child's ability to form emotional attachments to a consistent care-giver.[18] Children need more than physical sustenance; they also require emotional companionship and attention to flourish. Unfortunately, this fundamental need for connection is consistently not met in many institutions, leading to self-abuse, including children banging their head against walls or poking their eyes. In reaction, care-givers use physical restraints as a long-term solution, or hold the children in cages or their beds, practices that have been linked to muscular atrophy and skeletal deformity.

57. Another form of ill-treatment of children in health and social care detention settings is inappropriate medical care, including the use of psychoactive medications on children for punitive purposes, such as injected tranquilizers, which immobilize children for days, and forced labour in the guise of medical necessity. During one mission, the Special Rapporteur witnessed appalling conditions and ill-treatment of children with mental disabilities in so-called prayer camps, which are alternative residential facilities. He documented cases of shackling to the walls, floors or trees and forced fasting, in some cases on children with neurological problems (see A/HRC/25/60/Add.1, paras. 74-77).

58. Unsanitary and unsafe conditions may also lead to a violation of the prohibition of ill-treatment. The Special Rapporteur observes that overcrowding is present in many institutions, leading to severe constraints on institutional resources, shortages of adequate food, clean drinking water, bedding and medical care. Overcrowding also increases the risk of disease transmission and infection. Furthermore, adults and children are often not segregated in institutional facilities, leading to issues of exploitation.

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[17] See for example CRPD/C/AUT/CO/1 paras. 29-30, CRPD/C/SLV/CO/1 para. 31-32 and CRPD/C/AZE/CO/1, paras. 28-29.

[18] See Marinus H. van IJzendoorn et al., "Children in institutional care: delayed development and resilience", *Monographs of the Society for Research in Child Development*, vol. 76, No. 4 (2011), pp. 8-30; and Rebecca Johnson et al., "Young children in institutional care at risk of harm", *Trauma, Violence & Abuse*, vol. 7, No. 1 (2006), pp. 34-60.

3. Children in administrative immigration detention institutions

59. States frequently detain children who are refugees, asylum seekers or irregular migrants for a number of reasons, such as health and security screening, to verify their identity or to facilitate their removal from the territory. Sometimes, children may be inadvertently detained because there is a failure to distinguish between child and adult migrants, such as when children are unable to prove their age.[19] The Special Rapporteur has previously noted with concern that unaccompanied child migrants are systematically held in detention at police stations, border guard stations or migration detention centres instead of being held in reception centres, which are in practice often not numerous enough or are overcrowded (see A/HRC/16/52/Add.4, paras. 68-69). Most of the unaccompanied minors are not adequately informed about asylum procedures or their rights, do not have access to legal counsel or guardians, and are generally ignorant of the system.[20] Furthermore, the procedure to identify minors and to assess their age and vulnerability appears to be completely inadequate, as many children reported being registered as adults (see A/HRC/16/52/Add.4, paras. 68-73 and CAT/C/USA/CO/3-5, para. 19).

60. Many child migrants witness or suffer harsh physical abuse while detained. Reports indicate that children in immigration detention have been tied up or gagged, beaten with sticks, burned with cigarettes and given electric shocks, and that the use of solitary confinement of children in immigration detention is common around the globe. In other instances, migrant children have suffered from severe anxiety and mental harm after having witnessed sexual abuse and violence against other detainees. In some countries, encampment policies have led to the kidnapping, captivity and torture of child refugees. Child migrant detainees too often face lengthy detainment.[21]

61. In addition, many child migrants suffer appalling and inhuman conditions while detained including overcrowding, inappropriate food, insufficient access to drinking water, unsanitary conditions, lack of adequate medical attention, and irregular access to washing and sanitary facilities and to hygiene products, lack of appropriate accommodation and other basic necessities. In some cases, detention centres refuse to keep migrant children with their families also being detained, and have denied migrant children's right to communicate with their families. Such practices effectively isolate child detainees from social support groups.

62. According to the European Court of Human Rights, even short term detention of migrant children is a violation of the prohibition on torture and other ill-treatment, holding a child's vulnerability and best interests outweigh the Government's interest in halting illegal immigration.[22] The Inter-American Court of Human Rights further noted that, when assessing the possibility to return, expel, deport, repatriate, reject at the border, or not to admit or in any way transfer or remove a child to a State, the best interests of the child must

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[19] Information received from the International Detention Coalition on 2 February 2015.

[20] International Detention Coalition, *Captured Childhood*, Melbourne, Australia, 2012.

[21] See Human Rights Watch, *Barely Surviving: Detention, Abuse and Neglect of Migrant Children in Indonesia*, 2013, pp. 4, 34-36; MaryBeth Morand et al., *The Implementation of UNHCR's Policy on Refugee Protection and Solutions in Urban Areas, Global Survey – 2012*, UNHCR, April 2013, p. 5; and Amnesty International, "Egypt/Sudan: Refugees and asylum seekers face brutal treatment, kidnapping for ransom and human trafficking", 2013, paras. 6, 8.

[22] *Popov v. France*, judgement of 19 January 2012; *Rahimi v. Greece*, judgement of 5 April 2011; *Mubilanzila Mayeka and Kaniki Mitunga v Belgium*, judgement of 12 October 2006.

be determined, which also incorporate the component of adequate development and survival of the child.[23]

C. Training, complaint mechanisms and monitoring

63. An essential safeguard against torture and other forms of ill-treatment is the availability of multidisciplinary and qualified staff working in children's institutions. Inside the law enforcement, institution and migration systems, children are more vulnerable to human rights violations than adults because of the manner in which judicial and other officials deal with children.

64. A significant number of States lack an independent mechanism to monitor human rights violations not only in detention facilities but also in medical and social care institutions. Moreover, even when legislation exists to provide for the monitoring of such institutions, inadequate human and financial resources and weak legal enforcement mechanisms are no excuse for failure to prevent abuse.

65. Article 25 of the Convention on the Rights of the Child provides for the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement. In this context, the Special Rapporteur recalls that the possibility of release should be realistic and regularly considered (CRC/C/GC/10, para. 77). He also observes that, in practice, many States fail to apply these rights. Acts of torture and other cruel, inhuman or degrading treatment or punishment are more widespread than they appear owing to the greater vulnerability of children and their lack of capacity to articulate complaints and seek redress (see A/HRC/25/35, paras. 13-17).

66. Effective complaint procedures are an important safeguard against torture and other ill-treatment in all places of detention for children. According to article 37 (d) of the Convention on the Rights of the Child, children, including migrant children, have the right to prompt access to legal aid and other appropriate assistance, as well as the right to challenge the legality of the deprivation of their liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

67. With regard to migrant children, authorities routinely impede their access to lawyers, non-governmental organizations, service providers, interpreters and other sources of information and protection. Furthermore, children often never meet with their appointed guardian because they are deported before their representative arrives. In some cases, the report of a child's ill-treatment is routinely ignored by the official guardians. States have similarly failed to implement a legal right to representation for children detained in health-care settings. Even when States provide a legal right to review, it generally does not cover children placed with parental consent.

68. In January 2014, the Committee on the Rights of the Child, at its sixty-fifth session, adopted a recommendation that the General Assembly request the Secretary-General to conduct an in-depth international study on the issue of children deprived of liberty (A/69/41, annex II). The Special Rapporteur therefore welcomes General Assembly resolution 69/157, in which the Assembly invited the Secretary-General to commission an in-depth global study on children deprived of liberty.

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[23] *Rights and guarantees of children in the context of migration and/or in need of international protection*, Advisory Opinion of 19 August 2014, paras. 222 and 231-233.

IV. Conclusions and recommendations

A. Conclusions

69. **Owing to their unique physiological and psychological needs, which render them particularly sensitive to deprivation and treatment that otherwise may not constitute torture, children are more vulnerable to ill-treatment and torture than adults. The detention of children, including pretrial and post-trial incarceration as well as institutionalisation and administrative immigration detention, is inextricably linked – in fact if not in law – with the ill-treatment of children, owing to the particularly vulnerable situation in which they have been placed that exposes them to numerous types of risk. Moreover, the response to address the key issues and causes is often insufficient.**

70. **In determining the seriousness of acts that may constitute ill-treatment or torture, due consideration must be given to physical and mental effects and the age of the victim. In the case of children, higher standards must be applied to classify treatment and punishment as cruel, inhuman or degrading. In addition, the particular vulnerability of children imposes a heightened obligation of due diligence on States to take additional measures to ensure their human rights to life, health, dignity and physical and mental integrity.**

71. **There is widespread agreement among experts that the institutionalization of children contributes to physical underdevelopment, abnormalities in brain development, reduced intellectual abilities and development, delays in speech and language development, and diminished social skills. Inappropriate conditions of detention exacerbate the harmful effects of institutionalization on children. The Special Rapporteur observes that one of the most important sources of ill-treatment of children in those institutions is the lack of basic resources and proper government oversight.**

72. **The deprivation of liberty of children is intended to be an *ultima ratio* measure, to be used only for the shortest possible period of time, only if is in the best interests of the child, and limited to exceptional cases. Failure to recognize or apply these safeguards increases the risk of children being subjected to torture or other ill-treatment, and implicates State responsibility. Therefore, States should, to the greatest extent possible, and always using the least restrictive means necessary, adopt alternatives to detention that fulfil the best interests of the child and the obligation to prevent torture or other ill-treatment of children, together with their rights to liberty and family life, through legislation, policies and practices that allow children to remain with family members or guardians in a non-custodial, community-based context. Alternatives to detention must be given priority in order to prevent torture and the ill-treatment of children. This includes access to counselling, probation and community services, including mediation services and restorative justice. Furthermore, if circumstances change and the reclusion of children is no longer required, States are required to release them, even when they have not completed their sentences.**

73. **With regard to children deprived of their liberty within the context of the criminal justice system, the Special Rapporteur recalls that children should be charged, tried and sentenced within a State's system of juvenile justice, affording them adequate forms of protection, and never within the adult criminal justice systems. In addition, laws, policies and practices that allow children to be subjected to adult sentences are inherently cruel, inhuman or degrading because they fail to**

consider any of the special measures of protection or safeguards that international law requires for children. Children should never be treated as if they were adults. Because children are less emotionally and psychologically developed, they are less culpable for their actions and their sentencing should reflect the principle of rehabilitation and reintegration.

74. In this context, the Special Rapporteur recalls that the death penalty for children amounts to a violation of the prohibition of torture and other ill-treatment. Other punishments considered grossly disproportionate also amount to cruel, inhuman or degrading treatment or punishment. Life imprisonment and lengthy sentences, such as consecutive sentencing, are grossly disproportionate and therefore cruel, inhuman or degrading when imposed on a child. Life sentences or sentences of an extreme length have a disproportionate impact on children and cause physical and psychological harm that amounts to cruel, inhuman or degrading punishment. Similarly, the Special Rapporteur finds that mandatory sentences for children are similarly incompatible with the State's obligation regarding children in conflict with the law and the prohibition of cruel, inhuman or degrading punishment. Mandatory minimum sentences may result in disproportionate punishments that are often overly retributive in relation to the crimes committed, particularly in relation to the child's individual circumstances and the opportunity for rehabilitation. In the light of the unique vulnerability of children, including the risk of torture or ill-treatment in detention and States' obligation of due diligence to afford children heightened measures of protection against torture and other forms of ill-treatment, children must be subject to sentences that promote rehabilitation and re-entry into society.

75. The Special Rapporteur believe that there should be a formal obligation to notify a relative or another adult trusted by the child about his or her detention regardless of whether the child has so requested, except if this would not be in the best interests of the child. Parents or adults trusted by the child should furthermore be allowed to be present with the child during interrogation and any court appearances. An essential issue is the manner in which children are questioned. Interrogation should be age-sensitive and individualized, and undertaken by authorities that are skilled in interviewing children. Video recording should be given due consideration in certain circumstances, to avoid causing distress to children because of repeated questioning, and numerous visits to courts. Children should also have immediate access to a lawyer and a health professional. A specific information sheet setting out the above-mentioned safeguards should be given to all children taken into custody immediately upon their arrival at a law enforcement establishment, and this information should be verbally explained to children in terms that they understand.

76. Children should be appropriately separated in detention, including but not limited to children in need of care and those in conflict with the law, children awaiting trial and convicted children, boys and girls, younger children and older children, and children with physical and mental disabilities and those without. Children detained under criminal legislation should never be detained together with adult detainees. The Special Rapporteur also notes that the permitted exception to the separation of children from adults provided for in article 37 (c) of the Convention on the Rights of the Child should be interpreted *sensu stricto*. The best interests of the child should not be defined in accordance to the convenience of the State. Children in conflict with the law should be held in detention centres specifically designed for persons under the age of 18 years, offering a non-prison-like environment and regimes tailored to their needs and run by specialized staff, trained in dealing with children. Such facilities should offer ready access to natural light and adequate ventilation, access to sanitary facilities that are hygienic and respect privacy and, in principle, accommodation in individual bedrooms. Large dormitories should be avoided.

77. **An important safeguard against torture and other forms of ill-treatment is the support given to children in detention to maintain contact with parents and family through telephone, electronic or other correspondence, and regular visits at all times. Children should be placed in a facility that is as close as possible to the place of residence of their family. Any exceptions to this requirement should be clearly described in the law and not be left to the discretion of the competent authorities. Moreover, children should be given permission to leave detention facilities for a visit to their home and family, and for educational, vocational or other important reasons. The child's contact with the outside world is an integral part of the human right to humane treatment, and should never be denied as a disciplinary measure.**

78. **Children in detention should be provided throughout the day with a full programme of education, sport, vocational training, recreation and other purposeful out-of-cell activities. This includes physical exercise for at least two hours every day in the open air, and preferably for a considerably longer time. Girls should under no circumstances receive less care, protection, assistance and training, including equal access to sport and recreation.**

79. **The Special Rapporteur recalls that detention and forced labour programmes for children who use drugs are not a legitimate substitute for evidence-based measures, such as substitution therapy, psychological intervention and other forms of treatment given with full, informed consent (A/65/255, para. 31). Drug dependence as a "multi-factoral health disorder" requires a health response rather than recourse to detention.**

80. **Within the context of administrative immigration enforcement, it is now clear that the deprivation of liberty of children based on their or their parents' migration status is never in the best interests of the child, exceeds the requirement of necessity, becomes grossly disproportionate and may constitute cruel, inhuman or degrading treatment of migrant children. Following the advisory opinion of the Inter-American Court of Human Rights on the rights and guarantees of children in the context of migration and/or in need of international protection in 2014, the Special Rapporteur recalls the different procedural purposes between immigration and criminal proceedings, and that, in the words of the Court, "the offenses concerning the entry or stay in one country may not, under any circumstances, have the same or similar consequences to those derived from the commission of a crime." The Special Rapporteur therefore concludes that the principle of *ultima ratio* that applies to juvenile criminal justice is not applicable to immigration proceedings. The deprivation of liberty of children based exclusively on immigration-related reasons exceeds the requirement of necessity because the measure is not absolutely essential to ensure the appearance of children at immigration proceedings or to implement a deportation order. Deprivation of liberty in this context can never be construed as a measure that complies with the child's best interests. Immigration detention practices across the globe, whether de jure or de facto, put children at risk of cruel, inhuman or degrading treatment or punishment. Furthermore, the detention of children who migrate to escape exploitation and abuse contravenes the duty of the State to promote the physical and psychological recovery of child victims in an appropriate environment.[24] Therefore, States should, expeditiously and completely, cease the detention of children, with or without their parents, on the basis of their immigration status. States should make clear in their legislation, policies and practices that the principle of the best interests of the child takes priority over migration policy and**

[24] Convention on the Rights of the Child, arts. 34 and 39.

other administrative considerations. Also, States should appoint a guardian or adviser as soon as the unaccompanied or separated child is identified, and maintain such guardianship arrangements until the child has either reached the age of majority or has permanently left the territory and/or jurisdiction of the State (A/HRC/20/24, para. 41). While the Special Rapporteur acknowledges that, in certain circumstances it is possible for States to place children in a shelter or other accommodation when it is based on the purpose of child care, protection and support, this should not become a proxy for expanded unnecessary restrictions to the liberty of child migrants and families. States are required to favour measures that promote the care and well-being of the child rather than the deprivation of liberty. Facilities that grant accommodation for migrant children should have all the material conditions necessary and provide an adequate regime to ensure comprehensive protection from ill-treatment and torture, and allow for their holistic development. Migrant children should be separated from children who have been accused or convicted of criminal offences and from adults. The Special Rapporteur notes, however, that separating child migrants from unrelated adults can sometimes itself result in harm by depriving children of important interactions; ample opportunities for broader human interaction and physical activity must therefore be given to unaccompanied migrant children. When children are accompanied, the need to keep the family together is a not sufficient reason to legitimize or justify the deprivation of liberty of a child, given the prejudicial effects that such measures have on the emotional development and physical well-being of children. The Special Rapporteur shares the view of the Inter-American Court of Human Rights that, when the child's best interests require keeping the family together, the imperative requirement not to deprive the child of liberty extends to the child's parents, and requires the authorities to choose alternative measures to detention for the entire family.

81. The Special Rapporteur recommends that States adopt child-friendly administrative and criminal court procedures and train police officers, border guards, detention staff, judges and others who may encounter children deprived of their liberty in child protection principles and a better understanding of the vulnerabilities of children to human rights violations, such as torture and other forms of ill-treatment. Special mention should be made of girls, who are particularly vulnerable, and to special groups of children, such as minorities, disabled children and migrants.

82. Children deprived of their liberty and their parents or legal representatives should have avenues of complaint open to them in administrative systems, and should be entitled to address complaints confidentially to an independent authority. Upon admission, children should be given information on lodging a complaint, including the contact details of the authorities competent to receive complaints, as well as the address of any services that provide legal assistance. In this context, the Special Rapporteur welcomes the establishment of independent, local, socio-legal defence centres that provide children with the effective opportunity to have access to justice and subsequently to obtain remedies and advocate for systematic training in children's rights for professionals.

83. Regular and independent monitoring of places where children are deprived of their liberty is a key factor in preventing torture and other forms of ill-treatment. Monitoring should be conducted by an independent body, such as a visiting committee, a judge, the children's ombudsman or the national preventive mechanisms with authority to receive and act on complaints and to assess whether establishments are operating in accordance with the requirements of national and international standards. Independent monitoring mechanisms should draw on professional knowledge in a number of fields, including social work, children's rights, child psychology and psychiatry, in order to address the multiple vulnerabilities of children

deprived of their liberty and to understand the specific normative framework and overall system of child protection.

B. Recommendations

84. With regard to legislation, the Special Rapporteur calls upon all States:

(a) To investigate all allegations of torture or other ill-treatment of children deprived of their liberty in accordance with the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as codified in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, to prosecute and punish those responsible, and to act in accordance with the heightened obligation of due diligence of States to prevent the torture and ill-treatment of children;

(b) To expedite the ratification of the Convention of the Rights of the Child and the optional protocols thereto, and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(c) To adhere to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the United Nations Guidelines for the Prevention of Juvenile Delinquency.

85. With regard to the vulnerability of children deprived of their liberty and policy reform, the Special Rapporteur calls upon all States:

(a) To ensure that deprivation of liberty is used only as a measure of last resort only in exceptional circumstances and only if it is in the best interests of the child;

(b) To ensure that child-appropriate age determination procedures are in place, and that the person is presumed to be under 18 years of age unless and until proven otherwise;

(c) To promote preventive mechanisms, such as diversion and early identification and screening mechanisms, and to provide for a variety of non-custodial, community-based alternative measures to the deprivation of liberty;

(d) To ensure that paediatricians and child psychologists with trauma-informed training are available on a regular basis to all children in detention, and to establish specialized medical screenings inside places of deprivation of liberty to detect cases of torture and ill-treatment, including access to forensic evaluation;

(e) To provide mandatory training to all persons dealing with children, including training on the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the detection, documentation and prevention of torture and ill-treatment;

(f) To ensure that children in conflict with the law are charged, tried and sentenced within a State's juvenile justice system, never within the adult criminal justice system;

(g) To set the minimum age of criminal responsibility to no lower than 12 years, and to consider progressively raising it;

(h) To prohibit laws, policies and practices that allow children to be subjected to adult sentences and punishments, and to prohibit the death penalty and life imprisonment in all its forms;

(i) To provide additional training to the judiciary so that bail, probation and alternative measures to detention are considered;

(j) To establish clear guidelines for law enforcement agencies dealing with children; in particular, not to detain children in law enforcement establishments for more than 24 hours; to establish a formal obligation to notify a relative or caregiver about his or her detention regardless of whether the child requests that this be done, except if not in the bests interest of the child; to ensure access to a lawyer and a medical doctor; and never to subject children to police questioning without the presence of a lawyer and, in principle, his or her caregiver;

(k) Not to detain children in law enforcement establishments for more than 24 hours, and only in child-friendly environments;

(l) To amend legislation to require a presumption of community living, with support, as the favoured policy, for children with disabilities;

(m) To ensure that immigration detention is never used as a penalty or punishment of migrant children, including for irregular entry or presence, and to provide alternative measures to detention that promote the care and well-being of the child;

(n) To prohibit the use of immigration detention as a method of control or deterrence for migrant children;

(o) To ensure that unaccompanied migrant children are immediately provided with guardianship arrangements;

(p) To take into consideration any trauma or exposure to torture or other forms of ill-treatment that child migrants have experienced prior to being detained;

(q) To establish appropriate and confidential complaint mechanisms for all children deprived of their liberty, to provide all necessary support, including legal aid, information, representation and assistance, to guarantee access to justice for children who have been tortured or ill-treated while deprived of their liberty, and to ensure the safety and security of all children who file a complaint;

(r) To establish independent monitoring mechanisms at all places of deprivation of liberty, including places run by private actors, through regular and unannounced visits, and to include civil society organizations in the monitoring of places of deprivation of liberty;

(s) To transfer the oversight of all places of deprivation of liberty of children from justice, law enforcement or border management authorities to those responsible for child protection;

(t) To collect quantitative and qualitative data on of children deprived of their liberty, and to elaborate and publish the State's plans for children deprived of liberty;

(u) To support the global study on children deprived of their liberty, prepared pursuant to General Assembly resolution 69/157, and the appointment of an independent expert to lead the study.

86. **With regard to conditions during detention, the Special Rapporteur calls upon all States:**

(a) To separate children and adults in all places of detention and, when in the best interests of the child, to hold children and adults together during daytime, and only under strict supervision;

(b) To consider case-by-case assessment to decide whether it is appropriate for a particular inmate to be transferred to an adult institution after reaching the age of majority;

(c) To provide children deprived of their liberty with appropriate nutrition, health and other basic services, including ready access to natural light and adequate ventilation, access to sanitary facilities that are hygienic and respect privacy and, in principle, accommodation in individual bedrooms;

(d) To prohibit solitary confinement of any duration and for any purpose;

(e) To prohibit corporal punishment;

(f) To use restraints or force only when the child poses an imminent threat of injury to himself or herself or others, only for a limited period of time and only when all other means of control have been exhausted, and not to perform strip searches without reasonable suspicion;

(g) To respond to the specific needs of groups of children that are even more vulnerable to ill-treatment or torture, such as girls, lesbian, gay, bisexual, transgender and intersex children, and children with disabilities;

(h) To facilitate contact to the outside world, in particular with families and legal representatives;

(i) To provide educational, vocational and recreational age-appropriate opportunities and green spaces for children;

(j) To maintain an individualized case-management file for each child in detention (such as information on education and medical history), subject to careful data protection and privacy protection, including digital privacy, to ensure that the file is shared only with staff that requires such information.

(k) To ensure appropriate resources and staffing for all places of deprivation of liberty.